IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

S.B. CIVIL WRIT PETITION NO.3110/2001- OM PRAKASH JAWA VS. STATE & ORS. UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 22nd December, 2006

PRESENT

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Mukesh Vyas, Advocate, for the petitioner.
Mr. Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT:

The petitioner in this writ petition has challenged the order dated 12.5.2000 which the respondents have passed as per the directions contained in larger bench decision in Shanker Lal Vs. RSEB 1999 (1) WLC 1 holding that the qualification acquired prior to 28.6. 1985 shall make the candidates eligible for vacancies which have occurred upto that date but not thereafter as per the qualification certificate itself was changed. The order dated 12.5.2000 however seeks to revert the petitioner even though his promotion was made on the recommendations of DPC.

The grievance of the petitioner is that he was working with the respondents on the post of Class IV employee and on the basis of qualification of Prathama held by him, he was promoted on the post of LDC by order dated 16.9.1991. The respondents having promoted the petitioner on 16.9.1991 and allowed him to continue for all about 9 years, cannot now be permitted to revert him. Learned counsel for the petitioner in this connection has relied upon the judgment of the Division Bench of this Court in State of Rajasthan & Ors. Vs. Mani Lal Joshi (D.B. Civil Writ Special Appeal No.828/2001, decided on 25.11.2002) and argued that law declared by the decision of the larger bench of this Court would have only prospective application. The Division Bench in the aforesaid case considering same controversy held as under: -

> "It is in aforesaid circumstances when the petitioner challenged his reversion order, learned Single Judge has allowed the writ petition by holding that in view of the law declared by this Court when was holding the field when the petitioner was promoted. Subsequent reversal o that view on different petitions in different matters ought not to affect the transactions which have been completed on the belief about the correctness of law as was declared by this Court interpreting the relevant Rules and by

> which State too was bound to act in the consonance thereof. In these circumstances, it will not be just and fair to revert petitioner after a so long period. Interest of justice demands that as a result of declaration of effect of amendment in Rules vide notification dated 28.6.1985 be applied prospectively to future promotions, else it will result in serious injustice to petitioner who has otherwise rightly promoted as per declaration of law by this Court having binding force when promotion was made and the petitioner could not be held responsible for that in any manner."

Learned counsel for the petitioner also relied upon the judgment of the coordinate bench of this Court in Prabhu Dayal Bairwa & Ors. Vs. State of Rajasthan & Anr. 2000(4) WLC (Raj.) 542 wherein it was held that even in the case of reversion in a case like the present one, application of the principles of natural justice stand excluded.

Having heard learned counsel for the parties, I find that the larger bench judgment in Shanker Lal (supra) has been explained away by the Division Bench of this Court in Mani Lal Joshi (supra) while taking note of the earlier Division Bench decision in Jagdish Nath Vs. State of Rajasthan RLW 1995(1) 74 wherein the Division Bench held that persons acquiring

qualification prior to 28.6.1985 will continue to be eligible for promotion even for subsequent years also. The Division Bench of this Court in Mani Lal Joshi also considered the view reiterated in D.B. Civil Special Appeal NO.137/1996 State of Rajasthan Vs. Kastoor Singh & Ors. and this special appeal against the said decision was also dismissed by the Hon'ble Supreme Court on 29.9.1994. The Division Bench therefore held that it would not be just and proper to revert the petitioner after so long and the full bench judgment and the amendment was held to be applicable only prospectively.

In the result, the writ petition is allowed. The order of reversion in so far as it pertains to the petitioner, is quashed and set aside and the petitioner is held entitled to all consequential benefits.

There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

cpgoyal/-